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By Laurie Olde
(Name of Transmitter)

Laurie Olde
(signature)

#13
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12/19/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Elaine L. Jacobson, et al.

Serial No. : 09/834,228

Filed : April 12, 2001

For : METHODS AND COMPOSITIONS USEFUL IN ENHANCING
OXYGEN DELIVERY TO CELLS

Art Unit : 1617

Examiner : S. Hui

November 26, 2002

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

**PETITION TO WITHDRAW
FINALITY OF OFFICE ACTION**

Sir:

This is a petition to withdraw the finality of the office action dated November 20, 2002.

The office action is improperly final because it rejects claim 30 as being anticipated by Huber, U.S. Patent No. 2,431,558. See the rejection at page 2.

Claim 30 corresponds to prior claim 23. See the amendment of April 1, 2002. Claim 23 was considered in the office action of June 18, 2002, but was not rejected under 35 U.S.C. §102.

If an examiner could have made a rejection on first action, but did not, raising it for the first time in a second office action precludes the designation of the action as a final rejection. Hence, the examiner must either withdraw the rejection, or if she maintains it, the office action must be deemed non-final.

Favorable action on this petition is requested.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By 

Norman D. Hanson
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GROUP 1600

FACSIMILE TRANSMISSION

DATE: November 26, 2002

MATTER NUMBER:

10103730

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